page 178 of Appendix C of Sir Roland Braddell's Common Gaming Houses — 2nd Edition). The judgment in that case was delivered in the year 1911 and has been followed consistently by the Courts ever since. I consider myself bound by that decision and, while agreeing that first appellant was assisting to conduct a game of chance for money, I find that he was not assisting in the management of the premises. The case against the second appellant was even weaker as his explanation of the production of the key, corroborated as it was by the evidence of third appellant, was reasonably probable.

I therefore quash the convictions against the first and second appellants and substitute a conviction under section 6(i) in each case. Each of these appellants is fined $25 and the balance of the fines already paid will be repaid to them.

The third accused was fined $1,500 or, in default of payment, six months rigorous imprisonment. These sentences are exactly one half of the maximum provided by the section. The learned President gave careful thought to the sentences. They are certainly not unconscionable and I see no reason to interfere with the exercise of the Court's discretion. The appeal of the third appellant is dismissed therefore.

Order accordingly.

Re TAN SIM TIANG, DECD. CHINESE BANKERS TRUST CO., LTD. v. WEARNE BROTHERS LTD.

[O. C. J. (Murray-Aynsley, C.J.) May 1, 1953]

[Singapore — Originating Summons No. 83 of 1953]

Conveyancing and Law of Property Ordinance (Cap. 118), s. 35(2) — Sale by legal personal representative after the expiration of 6 years from death of deceased with the sanction of the Court.

The plaintiff, a Trust Company, was the sole administrator of the estate of Tan Sim Tiang, deceased, who died intestate in February 1942. The Trust Company was unable to extract the Letters of Administration until July 10, 1948 when it was already more than 6 years after the death on the intestate. The Trust Company therefore made an application to the Court by way of Originating Summons for sanction of the sale under section 35(2) of the Conveyancing and Law of Property Ordinance by the Trust Company as administrator of the immovable property belonging to the estate of the intestate and for other relief. One of the next of kin entitled in distribution to a share of the intestate's estate was made the defendant in those proceedings. On September 7, 1951 the High Court of Singapore made an Order in such Originating Summons: "That the Applicant be at liberty to sell the immovable property of the intestate specified in the Schedule hereto by public auction out of Court and that in the case of a sale or sales by auction the Particulars and Conditions of such sale or sales and the reserved prices at such sale or sales be approved by the Registrar of this Honourable Court".

Sales by auction took place and the purchaser of one Lot of immovable property at an auction, the defendant in these proceedings, refused to pay purchase money over to the administrator and contended that it should be paid into Court. The administrator contended that as the legal personal representative it had full power to receive and to give good receipts for the purchase moneys of the piece of freehold land in Singapore which the defendant had agreed to buy at the auction.

The questions now put to the Court by this Originating Summons were: "Whether section 35(2) of the Conveyancing and Law of Property Ordinance (Cap. 118) takes away or diminishes or in any way affects the right and/or power of the plaintiff (a Trust Company incorporated in Singapore under the Trust Companies Ordinance (Cap. 154)), the administrator of the estate of the deceased intestate to receive and to give good and valid receipts for purchase moneys payable to the legal personal representative as such on the sale of immovable property belonging to and forming part of the estate of the deceased intestate after the expiration of 6 years from his death; and whether the Order of this Honourable Court made in Originating Summons No. 154 of 1951 on 7th September, 1951, either requires or empowers the defendant to pay the balance of the purchase moneys under the said contract for sale dated 22nd January, 1953, to the plaintiff".

Held: (1) section 35(2) of the Conveyancing and Law of Property Ordinance (Cap. 118) did not take away or diminish or in any way affect the right and or power of the administrator of the estate of the deceased intestate to receive and to give good and valid receipts for purchase moneys payable to the legal personal representative of the deceased intestate as such on the sale of the immovable property belonging to and forming part of the estate of the deceased intestate after the expiration of 6 years from his death; (2) the Order made in Originating Summons No. 154 of 1951 required and empowered the defendant as purchaser of part of the immovable property belonging to the estate of the deceased intestate to pay the balance of the purchase money due under contract for sale to the plaintiff as such legal personal representative.

VENDOR AND PURCHASER SUMMONS.

John Laycock for the plaintiff — a Trust Company, sole administrator of estate of intestate — Section 35(2) of the Conveyancing and Law of Property Ordinance (Cap. 118) is purely a local section. It has no parallel in English law. The whole section forms part of the Colony of the Straits Settlements Ordinance No. 6 of 1886 but sub-section 2 was then different from what it is now. It then read as follows: "Provided that where a sale or mortgage of land belonging to the estate of a deceased person is made after the commencement of this Ordinance by the legal personal representatives or representative of such person after the expiration of a period of six years from his death the purchaser or mortgagee shall be bound to enquire as to the necessity and propriety of such sale or mortgage and shall (notwithstanding any stipulation to the contrary) be entitled to require evidence that such sale or mortgage is necessary and proper."

This sub-section was amended in 1911 by Ordinance No. 17 of 1911. All the Ordinance now

requires is that the sanction of the Court must be obtained if a sale or mortgage takes place after the expiration of six years from the death of the deceased unless the sale or mortgage is made in pursuance of a power or trust for sale or mortgage which is expressly contained in or may be implied from the terms of the Will of deceased. Before section 35 of the original Conveyancing and Law of Property Ordinance was passed it might have been said that one of several executors had no power to deal with the deceased's real estate so that when this section was passed in Singapore in the year 1886, it was in advance of the English law because it was only by section 1 of the Land Transfer Act 1897 that real property devoted to and became vested in the legal personal representative as chattels real in England. Since 1886 there is hardly any difference in Singapore in any respect between real estate and chattels real. The Court in giving its sanction to the exercise of the power of sale of immovable property by a legal personal representative can, and frequently does, impose upon the legal personal representative conditions and it did so in this case. There is nothing in the section or in the Order of Court which can possibly be interpreted as reducing or diminishing the right and/or power of the legal personal representative to receive and to give good and valid receipts for purchase moneys payable on the sale of property forming part of the estate of a deceased person.

W. B. Baker for the defendant. Section 74(7) of the Conveyancing and Law of Property Ordinance provides that rules for purposes of this Ordinance may be made but no such rules were ever made so that any application must be made under the existing R.S.C. The Rules treat particular cases with care and precision and define and limit the authority of the court. *Busfield Whaley v. Busfield* 32 C.D. p. 124.

The Order in this case cannot have been made under Order 48 and therefore it must be under Order 52. The Order made provides "that the Applicant be at liberty to sell the immovable property of the Intestate specified in the Schedule hereto by public auction out of Court and that in case of a sale or sales by auction the Particulars and Conditions of such sale or sales and the reserve prices at such sale or sales be approved by the Registrar of this Honourable Court". "Whenever I make an order for sale out of court, I require three things — namely, that the reserved bid should be fixed by the chief clerk; that the auctioneer's remuneration should be similarly fixed, and that the purchase-money should be paid directly into court. The directions as to the auctioneer's remuneration, as well as the reserved bid, must be mentioned in the order". *Pitt v. White* (1887), 57 L.T. 650 Kay, J. "The court being satisfied that all persons interested were parties to the action and desired a sale, an order was made for sale out of court with the usual directions as to fixing the reserved price and the auctioneer's remuneration and as to payment of the deposit and the rest of the purchase-money into court". *Re Stedman, Coombe v. Vincent* (1888), 58 L.T. 709. These judgments have been quoted or referred to with approval in all the principal works on Conveyancing and Chancery practice, in *Seton,* in *Daniell* and in *Dart.* The Order contains two of the usual three things required by Kay, J., but does not say whether the purchase-money is to be paid to the Applicant or into Court, and in the absence of any such direction the money must be paid into Court.

An order for payment in of purchase-money is now seldom required. *Daniell's Chancery Forms,* 7th Ed. at p. 556 note (j). In *A. R. P. L. Ramanathan Chettiar v. Cheang Sunny* (1940) M.L.J. 127, at p. 130 Terrell, J.A. "It will be seen that even when the sale is altogether out of Court the rule contemplates the proceeds of sale being paid into Court unless the Court otherwise orders" and then proceeded to quote with approval the judgment of Kay, J., in *Pitt v. White* and went on "I do not say that there may not be circumstances in which such rules may be relaxed, but the ruling of this learned Judge indicates the vigilance of the Court of Chancery in England where parties wish to avail themselves of the special procedure for the purpose of avoiding the expense of a sale under the supervision of the Court".

The Court has power in special cases, for example where all parties are *sui juris,* to order the purchase-money to be paid to the applicants — *Hayward v. Smith* V.C.M. 20th March 1869 A. 678; S.C. 20 L.T. 70 and in Singapore this may well be so as regards many applications under section 35(2) of the Conveyancing and Law of Property Ordinance but such power does not follow as a matter of course and must be specifically conferred by the Order.

John Laycock in reply: English Order 51 deals with sales of real estate only by order of the Court under the provisions of that order. See *Annual Practice* 1951 Vol. 1 p. 917; the notes headed: "Cause or Matter relating to Real Estate." There is no parallel between such orders and the present case in which there is NOT an order for sale of real estate. The order was only an order giving the Court's sanction to the sale of a chattel real by the personal representative; not an order for sale at all. The operation words are: "that the Applicant be at liberty to sell ..... etc." That is all that section 35(2) of the Conveyancing and Law of Property Ordinance requires.